



CONSUMER NEWS

SAN DIEGO CITY ATTORNEY'S OFFICE

Weights & Measures Violations

June 2009

One of the most important areas of consumer protection involves the enforcement of our weights and measures laws. These laws regulate how a businessperson charges consumers for goods when the charge is based on a unit of measure or weight.

The law addresses a variety of situations including standards of measurement, measuring and weighing devices, fair packaging and labeling, unit pricing, weighmasters, scanners, and rules governing specific products. Anyone who violates these laws is guilty of a crime. Violations of the weights and measures laws are prosecuted by the City Attorney's Consumer & Environmental Protection Unit.

STANDARDS OF MEASUREMENT:

There are two systems for measuring goods: the metric and the inch/pound system. Anyone selling packaged consumer goods must indicate the net quantity of the

contents in both inch-pound and the metric system. This rule does not apply to foods that are packaged at the retail store level. Products that are sold by weight or volume but are not in packages, like gasoline, can be sold by the gallon or pound.

The law requires the businessperson to charge for the product, not for the packaging. Thus, a retailer must subtract the tare weight (weight of the packaging) from the price the consumer is charged. It is also illegal to add substances to a package and charge for the weight of those substances.

MEASUREMENT AND WEIGHING DEVICES:

The state also regulates the use of weighing and measuring devices. Anyone who uses for commercial purposes an incorrect weighing or measuring device or a device that has not been sealed by the County Sealer is guilty of a misdemeanor.

The State of California Dept. of Measurement Standards sets the standards that measuring and weighing devices must meet, in

accordance with national standards. Each county in California has a sealer for weights and measures whose responsibility it is to ensure that measuring and weighing devices meet state standards.

Before a retailer can begin using a weighing or measuring device for commercial purposes, the retailer must have the device inspected by the county sealer. If the device passes the inspection, the sealer will affix a sticker to the device indicating it has passed the inspection. An example of a type of measuring device that must bear a sticker indicating it has been inspected, is a gasoline pump.

FAIR PACKAGING AND LABELING:

Every packaged product offered for sale to the public must have a label that meets California law. The label must state:

- The identity of the product
- The name and place of business of the manufacturer, packer or distributor

- The net quantity of contents on the principal display panel

It is unlawful to add qualifying words to the statement of the net quantity, like “about 16 ounces.”

The package of a product must also be constructed in a way that does not facilitate the perpetration of deception or fraud. This includes:

- Using a false bottom, false sidewalls, or a false lid or covering
- Using non-functional slackfill to make a product look larger than it is. Nonfunctional slackfill is the empty space in a package that is filled to less than its capacity when that space is not otherwise necessary. If the packaging allows the consumer to see the contents of the package, then this provision does not apply.

UNIT PRICING:

California law requires that some commodities be labeled with the number of the items in the package. This law applies to the following products when they are packaged in counts greater than 10:

- All canned, bottled and packaged foods, packaged produce and bakery goods;
- Paper, plastic, wood, and metal products;
- Rolled paper, plastic, and metal products;
- Canned, bottled, and packaged domestic, laundry and household cleansing, finishing, waxing, and polishing products;
- Drug and first aid products.

WEIGHMASTERS:

California also regulates weighmasters. A weighmaster is a person who, for hire, weighs, measures, or counts any commodity and issues a statement of the weight, measure or count, which is used as the basis for either the purchase or sale of that commodity or charge for services.

For example, retailers who sell mixed concrete to the public by weight must employ weighmasters to ensure they provide the correct quantity to the consumer.

There are exceptions to this requirement. For example, retailers who weigh, measure, or count products they are selling to a consumer in the consumer’s presence are not required to be weighmasters.

Weighmasters must have a license issued by the state and must completely fill out the certificates they issue. It is a misdemeanor for a weighmaster to incorrectly state the weight of a product on a certificate. This can happen when a weighmaster weighs a truckload of concrete and fails to subtract the weight of the truck from the total weight of the truck and product.

SCANNER VIOLATIONS:

Retailers who use scanners must register with the county weights and measures dept. and are subject to inspection to ensure pricing accuracy. A scanner is any computer or electronic system used to look up codes, like UPC codes to determine the price charged to the consumer.

The County of San Diego has a scanner enforcement system in place and regularly inspects establishments that use scanners. The County of San Diego Dept. of Weights and Measures also

responds to complaints from members of the public about overcharges by retailers using scanners. Inspectors who find violations of the law present the retailer with a Notice of Violation and have the choice to seek an administrative fine or submit the case to a prosecutor. The San Diego City Attorney’s Consumer and Environmental Protection Unit handles cases submitted by the County Dept. of Weights and Measures where the overcharge occurred in the City of San Diego.

To view a list of businesses that have been prosecuted for committing scanner violations, visit the County of San Diego Dept. of Agriculture, Weights & Measures website at: www.sdcountry.ca.gov/awm/violations_scanners.html

RULES GOVERNING SPECIFIC PRODUCTS:

In addition to the laws above which apply to all retailers, there are weights and measures laws that regulate the sale of specific products, like petroleum and hydrogen fuels, automotive products, and rental vehicles.

Anyone selling petroleum products is prohibited from requiring a consumer to purchase or pay for another product in order to purchase the petroleum product. A person selling petroleum products is prohibited from misrepresenting the brand, grade, quality or price of the product. If the seller of the petroleum product sells a grade of motor fuel for more than one price, the seller cannot advertise the lower price unless he/she also advertises all the higher prices in equal size print.

